

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

**Criminal Appeal No.184 DB of 1999**

Date of decision: 26.3.2008

Bhoop Singh and others

-----Appellants

Vs.

State of Haryana

-----Respondent

**CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL  
HON'BLE MR JUSTICE S.D.ANAND**

Present: Mr.JS Bains, Advocate as Amicus Curiae.

Mr.SS Patter, Sr. DAG, Haryana for the State.

**JUDGMENT:**

The appellants – Bhoop Singh, Duli Chand and Mukesh challenge their conviction on the charge of murder of Smt.Surji Devi, causing injuries to Om Parkash and Smt.Ram Kalan and house trespass in the house of Om Parkash with preparation to cause hurt. They have been sentenced as under:-

- |                              |   |
|------------------------------|---|
| “1. Under Section 302/34 IPC | To undergo rigorous imprisonment for life and to pay fine of Rs.2000/- in default of payment of fine, to further undergo RI for one year. |
| 2. Under Section 323/34 IPC  | To undergo RI for one year and to pay a fine of Rs.200/- and in default of payment of fine, to  |

further undergo RI for one month.

3. Under Section 452 IPC

To undergo RI for three years and to pay a fine of Rs.300/- and in default of payment of fine to further undergo RI for two months.”

Case of the prosecution is that on 30.12.1995, at 6 PM, accused Duli Chand obstructed the passage to the house of Om Parkash PW2, son of deceased Surji Devi. This led to an altercation between them. At 7.30 PM when Om Parkash was sleeping in his *baithak*, accused Bhoop Singh, armed with *jelly*, Duli Chand and Mukesh armed with *sticks* entered the said *baithak* and challenged Om Parkash. Om Parkash got up and asked them to go out of the *baithak*. Bhoop Singh gave *jelly* blow on his head. Duli Chand gave a *lathi* blow on his left shoulder, Mukesh gave a *lathi* blow on his buttocks and dragged him on the road. His sister-in-law (sister of his wife, who was also his brother's wife) Ram Kalan and his mother Surji Devi, aged 65 years came there on hearing the noise. Om Parkash, Ramesh, Rajender and Inder Singh (acquitted co-accused) came to help Bhoop Singh. Bhoop Singh gave beatings with slaps and fists to Om Parkash. Ram Kalan and Surji Devi intervened to save Om Parkash. Bhoop Singh gave *jelly* blow on the head of Ram Kalan and Mukesh gave a *stick* blow near

her right elbow. Mukesh also gave two *stick* blows to Surji Devi on her left elbow and knee. Bhoop Singh caught hold of Surji Devi by her hair and threw her on the road. Om Parkash raised alarm on which the accused left. Surji Devi succumbed to her injuries. Ram Kalan was taken to the hospital by her husband on a cycle. In the morning at 10 AM, Om Parkash went to the Police Station where his statement was recorded by ASI Mahabir Singh PW11, which led to registration of FIR. ASI Mahabir Singh PW11 went to the spot. He prepared inquest report and sent the dead body for post mortem. He prepared rough site plan. He also took into possession clothes of the deceased after post mortem. He took other steps for investigation. On 2.1.1996, he arrested Bhoop Singh, Ramesh, Duli Chand, Parkash and Mukesh and during interrogation, he recovered *jelly* at the instance of Bhoop Singh, *sticks* at the instance of Duli Chand and Mukesh.

PW1 Dr. RS Sangwan alongwith other members of the board conducted post mortem examination on the dead body of Surji Devi on 31.12.1995 and found following injuries:

- “1. Abrasion 3 cm x 1 cm on left forearm laterally near elbow joint.
2. Abrasion 3 cm x 2 cm on left knee joint laterally.
3. Lacerated wound of the size of 4 cm x 0.25 cm on

right tempo-parietal region, bone deep, was present. On dissection fracture of right temporal bone was found. Bone matter outside with clotted blood was present.”

It was opined that the death was due to haemorrhage, shock and injury to brain which was ante mortem and sufficient to cause death in the ordinary course of nature. He also proved opinion Ex.PD/1 that injury No.3 could be by catching hold of hairs and throwing on the road.

The prosecution examined PW1 Dr. RS Sangwan, PW2 Om Parkash, PW3 Ram Kalan (both of whom are injured eye witnesses), PW4 C Rajesh Kumar, PW5 HC Ved Parkash, PW9 Constable Daulat Ram and PW10 Constable Vinod Kumar (formal witnesses), PW6 Constable Dharampal, Draftsman, PW7 Marru Ram, Patwari (regarding revenue record), PW8 Raghbir Singh, Photographer and PW11 ASI Mahabir Singh, Investigating Officer.

The accused denied the prosecution allegations. Plea of Bhoop Singh, Duli Chand and Mukesh, appellants was that on 29.12.1995, Revenue Patwari had gone to demarcate the plot of accused Mukesh to which the complainant party created obstruction. Next day at 7 PM, Gulab Devi, wife of Duli Chand

had gone to answer the call of nature. Om Parkash, Satbir and Sish Ram abused and quarrelled with her. On her raising alarm, Bhoop Singh, Mukesh and Duli Chand reached there. Om Parkash caused injuries to them. Surji Devi fell on road from the cycle and received injuries when she was going to meet Ram Kalan. Rajender, Parkash, Jagan Ram and Inderjit were not present at the place of occurrence. Jagmal also arrived at the place of occurrence. DW1 Dr. RS Sangwan was examined to prove injuries on Bhoop Singh and Mukesh Kumar. The injuries were simple and could be self suffered or sustained by fall on a hard surface, as opined by the doctor. DW2 HC Rati Ram was examined to prove statement of Bhoop Singh recorded on 31.12.1995, Ex.DH.

PW1 Dr. RS Sangwan also examined Ram Kalan on 30.12.1995 and found following injuries:-

- “1. Lacerated wound 1.5 cm x 0.3 cm on the right frontal region anteriorly. She was having fresh bleeding in this wound.
2. She had complained of pain, associated with diffused swelling on right elbow with difficulty in movement. She was advised x-ray.”

The trial court, after considering the evidence on record, convicted and sentenced the appellants, while acquitting the co-

accused.

We have heard learned counsel for the parties and perused the record.

Contentions raised on behalf of the appellants are that there was delay in lodging of the FIR. Occurrence took place at 7 PM on 30.12.1995 but the FIR was lodged on 31.12.1995 at 10 AM after due deliberations and consultations. Version given by Ram Kalan in her statement Ex.DB recorded by PW11 ASI Mahabir Singh at 11.50 AM in the hospital was the earliest version wherein injuries to Surji Devi are not mentioned. She also attributed injuries only to Bhoop Singh and Mukesh and not to any other accused. Her version in Court was, thus, an improvement. Version of Om Parkash PW2 being at variance with the earliest version of Ram Kalan was not reliable. In any case, there was no probability of all the three accused sharing common intention in causing the death of Surji Devi and even according to improved version, fatal injury found on Surji Devi could be attributed only to Bhoop Singh, appellant, while Duli Chand has not been given any role in assaulting the deceased. Mukesh was attributed *stick* blows to Surji Devi on the left elbow and left knee, causing simple injuries and they did not share common intention of

Duli Chand.

Though, we do not find any merit in the contention raised qua appellant Bhoop Singh but the alternative submission qua sharing of common intention by Duli Chand and Mukesh has merit.

As per version of the prosecution, Duli Chand had an altercation with Om Parkash on 30.12.1995 at 6.30 PM. Om Parkash came back to his house and slept. Bhoop Singh armed with *Jelly*, Duli Chand and Mukesh armed with *sticks* entered the house of Om Parkash and challenged him. Bhoop Singh, Duli Chand and Mukesh assaulted him and on hearing noise, Ram Kalan and Surji Devi were attracted to the spot. Accused again proceeded to assault Om Parkash but on intervention of Ram Kalan and Surji Devi, Ram Kalan and Surji Devi received injuries. Thus, there was no premeditated attack to cause death of Surji Devi. Only on account of her intervention to rescue Om Parkash, she was assaulted by Bhoop Singh. There was no sharing of common intention. Act of Bhoop Singh in holding of hair of Surji Devi and throwing her on the ground resulted in injury to the brain, which was sufficient to cause death. Bhoop Singh cannot be exonerated for the role played by him and in view of clear evidence against

him, in the form of deposition by eye witnesses Om Parkash and Ram Kalan, which is corroborated by medical evidence, conviction and sentence of Bhoop Singh is liable to be upheld. There is no substance in the defence version. His appeal is liable to be dismissed.

As regards the contention that Ram Kalan gave statement Ex.DB, we find that Ram Kalan herself had been injured and injury No.1 was on the right frontal region. The discrepancy pointed out in her, not mentioning receiving of injury by Surji Devi, is of no consequence in view of medical evidence and in view of her own version given in court and version given by Om Parkash. Delay in FIR is not by itself a ground to reject the version of the prosecution. The occurrence took place in the night on 31.12.1995. In a December night, it may not be possible for a person to go to lodge FIR from a village. Om Parkash being son of Surji Devi, who died on the spot, must have been in a state of shock. The explanation furnished by him that he could not go to Police Station without a vehicle, is quite natural and sustainable in the circumstances of the case.

We, thus, uphold conviction of Bhoop Singh, appellant and dismiss his appeal.



We partly allow the appeal of Duli Chand and Mukesh, and set aside their conviction under sections 302/34 IPC. We, however, uphold their conviction under sections 323/34 IPC and 452 IPC and sentence them to the period of sentence already undergone. We substitute the sentence of fine by order of compensation of Rs.50,000/- each, to be shared by Om Parkash and Ram Kalan, injured witnesses.

The appeal is disposed of accordingly.

(Adarsh Kumar Goel)  
Judge

March 26, 2008  
'gs'

(S.D.Anand)  
Judge